

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JULIO MELECIO,

Plaintiff

v.

**DEPUTY WARDEN
MICHAEL BUONO, et al.,**

Defendants

:

:

CIVIL ACTION NO. 3:16-1668

:

(Judge Mannion)

:

:

**FILED
SCRANTON**

MAR 2 / 2018

PER _____
DEPUTY CLERK

MEMORANDUM

I. Background

On August 11, 2016, Petitioner, Julio Melecio, an inmate formerly confined in the York County Prison¹, filed the above civil rights action pursuant to 42 U.S.C. §1983. (Doc. 1, complaint). On November 23, 2016, Plaintiff filed an amended complaint. (Doc. 25, amended complaint). The named Defendants are various employees of the York County Prison, as well as PrimeCare Medical, Inc. and several of its employees. Id. Plaintiff alleges that Defendants have been deliberately indifferent to his serious ongoing medical need, scoliosis. Id. On May 19, 2017 and June 9, 2017, two separate motions to dismiss Plaintiff's complaint were filed by the Defendants). (Docs. 53, 58).

¹Melecio is currently confined in the State Correctional Institution, Camp Hill, Pennsylvania.

On November 20, 2017, Leticia Chavez-Freed, Esquire, entered an appearance on behalf of Plaintiff, who had been proceeding *pro se*. (See Doc. 81).

On January 11, 2018, Attorney Chavez-Freed withdrew her appearance. (Doc. 82).

On January 17, 2018, Attorney Chavez-Freed contacted Defendants' counsel, to provide them with a Notice of Voluntary Dismissal, pursuant to F.R.C.P. 41(a)(1)(A)(i), which was executed by Plaintiff after the withdrawal of Attorney Chavez-Freed. (See Doc. 85-3, Chavez-Freed Affidavit).

On January 29, 2018, Defendants filed a motion to dismiss the above captioned action pursuant to Plaintiff's voluntary dismissal, and attach Plaintiff's executed Notice of Voluntary Dismissal as an exhibit. (See Doc. 85-2, Notice). Defendants' motion contained a certificate of service, indicating that they served Plaintiff with their motion at the York County Prison. (See Doc. 85)

Coincidentally, on January 29, 2018, an unrelated Order of this Court was returned to the Court as "undeliverable" to Plaintiff Julio Melecio, indicating that Melecio had been transferred from the York County Prison.

On January 30, 2018, the Clerk of Court mailed Defendants' January 29, 2018 motion to dismiss to Plaintiff at his current location, SCI-Camp Hill.

To date, Plaintiff has not filed any response to Defendants' motion to dismiss, indicating that he wishes to proceed in a manner different than indicated in Defendants' motion to dismiss. Accordingly, for the reasons set forth below, the Court will accept and file Plaintiff's Notice of Voluntary dismissal of this action pursuant to F.R.C.P. 41(a)(1)(A)(i), and the action will be dismissed.

II. Discussion

Fed.R.Civ.P. 41(a)(1) states in relevant part:

(a) Voluntary Dismissal

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared in the action.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claims, a notice of dismissal operates as an adjudication on the merits.

No answer or motion for summary judgment has been filed in the above captioned action. Thus, Plaintiff is entitled to dismissal under Fed.R.Civ.P. 41(a)(1),(A). A separate Order will be issued.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Dated: March 27, 2018

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